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Via PRO-SE INTAKE UNIT

November 8, 2019

The Honorable J. Paul Oetken
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

RE: Brian Totin vs. Peterkin Residential, Inc.
Civil Action No 19-cv-04673-JPO

Dear Judge Oetken,

I am the *pro-se* plaintiff in this matter and I write this letter in response to non-party Brandon Evan's undated communication with the Court (Dkt. 13) requesting an extension of time to "appeal the default judgement" and to retain legal counsel. Plaintiff respectfully requests that the Court note that this letter was not served on Plaintiff in accordance with the Court's Individual Practices in Civil Pro-Se Cases; I discovered it on the ECF system while checking to see if the Court has made a determination on the pending motion for default judgement (Dkts. 9-11). Additionally, it appears that there may be a prior, undocketed, letter to Chambers that was not served upon the Plaintiff as Mr. Evans refers to this current letter "as a follow up."

Mr. Evans lacks standing to make this request of the Court and therefore his request should be denied. Mr. Evans is not a party to this case. Mr. Evans does not purport to write on behalf of the Defendant in this matter, Peterkin Residential Inc. As it is well established, a defendant corporation may only appear before the Court through an attorney. Regardless, while Mr. Evans was, at one time, a real estate salesperson affiliated with the Defendant, a search of the records of the New York State Department of State, Division of Licensing Services as of today (attached) indicates he is not currently affiliated with or employed by the Defendant. Upon information and belief, Mr. Evans is not, and cannot legally be, an officer or owner of the Defendant corporation, as licensed real estate salespersons are prohibited by law from being an owner or officer of a real estate firm (owners and/or officers of a real estate firm must hold a broker's license, not a salespersons license).

The Defendant was served with the Summons and Complaint in this matter on June 25 (Dkt. 5); Plaintiff's request for a certificate of default on July 17 (Dkt. 6); and Plaintiff's motion for default judgment on July 18 (Dkts. 10, 12). The Defendant has had nearly five months to answer or otherwise respond to this action but has failed to do so. The Defendant, not Mr. Evans, was required to answer or otherwise respond to this action, so any surgery Mr. Evans purported to have undergone around the time of initial service would not bar the Defendant from

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responding. Additionally, the Defendant was put on notice of Plaintiff's claim nearly a year before Plaintiff filed suit; the Defendant chose to ignore this as well.

The Court has not issued a default judgement in this matter, so no party has any basis to appeal, contest or ask for reconsideration of a default judgement. Mr. Evans is a witness in this matter, and as such he may be personally entitled to retain his own legal counsel, but the decision of a witness to retain counsel does not preclude the Court from issuing a default judgement, as a judgment will be against the Defendant, not the witness, and a witness does not give testimony or provide evidence in a default judgement.

One of the factors used by Courts in the Second Circuit to determine what amount to award for statutory damages in copyright litigation is, "the conduct and attitude of the parties" *Bryant v. Media Right Productions, Inc.*, 603 F.3d 135 (2d Cir. 2010); *N.A.S. Import, Corp. v. Chenson Enters., Inc.*, 968 F.2d 250, 252-53 (2d Cir. 1992). While not a party, Mr. Evans, a former employee and/or agent of the Defendant, placed the advertisement containing the infringing use of Plaintiff's photographs on behalf of the Defendant. In his letter to the Court, Evans makes patently untrue statements to the Court concerning a non-existent "working relationship¹" with the Plaintiff and alludes to Plaintiff's "ulterior motives" other than the clear motive for the filing of this suit – the Defendant's willful infringement of Plaintiff's copyright. The evidence of the Defendant's copyright infringement is clear from the pleadings, so Mr. Evan's assertion that Plaintiff has falsely accused Defendant of copyright infringement is itself false. Mr. Evans' conduct and attitude in writing this letter to the Court is further proof of why Plaintiff is entitled to the relief sought in the motion for default judgment.

Mr. Evans' spurious letter is an attempt to place false and unchallenged testimony on the record and to interfere with and protract this litigation. I respectfully request that the Court deny Mr. Evan's request and further enjoin Mr. Evans from making any future filings in this case without leave of the Court.

Thank you for your attention to this matter.

Very Truly Yours,



Brian Totin

¹ Mr. Evans and I have never had a "working relationship" or any sort of relationship at all. I do not know him socially and other than the June 2018 email that prompted my discovery of these infringements, a search of emails going back to 2012 yields two inquiries from an agent named Brandon Evans, one in 2016 and a second in 2014. I have been a real estate agent for almost 14 years and have contact with thousands of agents a year; three email exchanges in five years are not a "working relationship." Mr. Evans cannot produce "evidence of (my) ulterior motives" or be in possession of any evidence that this case was "raised unjustly" as the motivation for filing this suit is clear from the exhibits attached to the complaint - the Defendant's willful infringement of my copyright.

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Name:		PETERKIN RESIDENTIAL INC	
License Type:		Principal Office:Princ Off	
License Number:		10991217734	
License Status:		Current	
Expiry Date:			
Addresses			
Main Address		Address:	694 Hegeman Ave BROOKLYN , NY KINGS 11207 US
		Phone Number:	347 743 7965
Relation(s)		License Type	Address
Related Party Name			License Expiry Date
DAVIS, TYNISHA C		Corporate Broker:Corp. Broker	694 Hegeman Ave BROOKLYN , NY KINGS 11207 US
			12/10/2020
Related Party Name	License Type	Address	License Expiry Date
Harper, Jazmine	Salesperson:Salesperson	694 Hegeman Ave BROOKLYN , NY KINGS 11207 US	04/25/2021
Joseph, Myrcie Joseph	Salesperson:Salesperson	694 Hegeman Ave BROOKLYN , NY KINGS 11207 US	04/30/2021

Related Party Name
FRASER, DWANE

License Type
Salesperson:Salesperson

Address
694 Hegeman Ave
BROOKLYN , NY
KINGS
11207
US

License Expiry Date
10/12/2020

McWilliams-Joseph, Trevor Lamar

Salesperson:Salesperson

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CERTIFICATE OF SERVICE

The undersigned hereby declares under penalty of perjury that he caused the foregoing letter to be sent by first class mail to Defendant and non-party Brandon Evans at the following addresses:

Peterkin Residential Inc.
Attn: Tynisha Davis
694 Hegeman Avenue
Brooklyn, NY 11207

Brandon Evans
PO Box 20705
Brooklyn, NY 11202

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Brian Totin', with a stylized, sweeping flourish at the end.

Brian Totin